

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL WALTER BERGER,
Plaintiff,

v.

JEFFREY BEARD,
Defendant.

Case No. [15-cv-0681-TEH](#)

ORDER DENYING MOTION TO
APPOINT COUNSEL, GRANTING
EXTENSION

Re: Dkt. No. 24

Plaintiff, a former state prisoner has filed a motion to appoint counsel. A district court has the discretion under 28 U.S.C. § 1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See id. Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under § 1915 (e)(1). Here, exceptional circumstances requiring the appointment of counsel are not evident. The request for appointment of counsel is therefore DENIED.

Plaintiff will be provided an extension to file an opposition to the motion for summary judgment. Plaintiff shall file the opposition by January 25, 2016. The Clerk shall send

1 Plaintiff a copy of the memorandum of points and authorities for
2 summary judgment (Docket No. 21-1).

3 This order terminates Docket No. 24.

4 IT IS SO ORDERED.

5
6 Dated:12/23/2015



THELTON E. HENDERSON
United States District Judge

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